

*Silberstein Awad Miklos, P.C.***MEMO ENDORSED**

Honorable Richard M. Berman
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street, Room 650
New York, New York 10007

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| OCT 18 2007 | |
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| <i>Motion may be filed by 10/19; Response due by 10/31; reply by 11/2/07. See October 18, 2007 Court's Rule re: length, etc. I assume motion can be decided on the papers.</i> | |
| SO ORDERED: | |
| Date: <u>10/18/07</u> | <u>Richard M. Berman</u> Richard M. Berman, U.S.D.J. |

Re: Jarvis v. Varian Medical Systems, Inc.
07 Civ. 8181 (RMB)

Honorable Sir:

This letter concerns requesting a pre-motion conference on an emergency basis so that plaintiffs in the above-mentioned case, Charles Jarvis and Karon Jarvis, can timely move to remand the case to State Supreme Court. The case was commenced in New York State Supreme Court, Bronx County (Index No. 018761/2007) and then removed to this Court on September 19, 2007 (i.e., the Notice of Removal was filed on September 19, 2007).

The time for plaintiffs to make their motion to remand is thirty (30) days from the filing of the Notice of Removal, which would be Friday, October 19, 2007. Plaintiffs respectfully assert that their motion has merit. (Plaintiffs' motion would seek permission to join defendants from a pending State Court medical malpractice case, resulting in loss of diversity jurisdiction, and remand to State Court). (See e.g., Clancy v. Zimmer, Inc. 2007 WL 969237 (W.D.N.Y. 2007)).



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Plaintiffs assert that the claims in the instant case (i.e., products liability) and in the pending State Court medical malpractice case arise from the same medical procedure (i.e., radiation treatment). That is, in the medical malpractice case (Supreme Court, Bronx County, Index No. 8580,2007), plaintiffs claim that during radiation treatment, plaintiff Charles Jarvis was over-radiated resulting in blindness and other injuries. In the instant case, plaintiffs assert that a machine manufactured by defendant Varian Medical Systems, Inc., which was used to deliver all or part of the radiation treatment, was defective, malfunctioning, etc., and that such was a proximate cause of plaintiffs' injuries.

The delay in seeking the pre-motion conference was my time lost from work to help care for 1 month old twins, my lack of experience practicing in Federal Court, and my lack of understanding of Justice Berman's individual practices requiring a pre-motion conference. I apologize for the delay to all parties affected, and only state that plaintiffs would be truly prejudiced if they were not permitted to bring the motion to remand in a timely manner.

A copy of this letter is being faxed to counsel for defendant Varian Medical Systems, Inc. and to counsel for the defendants in the State Court medical malpractice case who have answered or appeared in the case.

Respectfully,

Re: Jarvis v. Varian Medical Systems, Inc.
07 Civ. 8181 (RMB)
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Silberstein, Awad & Miklos, P.C.

By: Paul N. Nadler

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